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No. 09-257

Supreme Court, U.S.
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In The

Supreme Court of the United States

ERICA CORDER,

Petitioner,

v.

LEWIS-PALMER SCHOOL DISTRICT NO. 38,

Respondent.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Tenth Circuit

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

W. STUART STULLER
Counsel of Record
CAPLAN AND EARNEST LLC
1800 Broadway
Suite 200
Boulder, CO 80302
(303) 443-8010

Counsel for Respondent

COCKLE LAW BRIEF PRINTING CO. (800) 225-6964
OR CALL COLLECT (402) 342-2831

QUESTIONS PRESENTED

1. Whether the First Amendment prohibits school officials from exercising editorial control over the remarks of student graduation speakers.

2. Assuming that the First Amendment does not prohibit school officials from exercising editorial control over the remarks of student graduation speakers, what limitations, if any, does the First Amendment place on the authority of school officials to discipline a student who has evaded the mandatory review process.

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STATEMENT OF THE CASE

A. Introduction

The Petition's "Questions Presented" and "Statement of the Case" do not accurately reflect the issues that would be before the Court if the petition is granted.

An accurate recitation of facts is found in section C below.

In addition, the introductory paragraph to the Petition's "Questions Presented" briefly quotes from Colorado Revised Statute section 22-1-120 (2008) apparently to persuade the Court that Colorado state law prohibits school officials from exercising editorial control over the remarks of student speakers at commencement exercises. The full text of the statute is set forth in the Appendix. The statutory text makes clear that the statute concerns student publications, not school activities such as graduation exercises. The scope of the statute has not been addressed by any Colorado court since its adoption more than nineteen years ago. 1990 COLO. SESS. LAWS 1042. Thus, the Petition asks the Court to decide a question of federal constitutional law based upon an interpretation of a state law that is not supported by the text of the statute, nor any state court interpretation of the statute.

B. Procedural Posture

Petitioner Erica Corder filed suit against the Lewis-Palmer School District asserting claims under the Free Speech, Establishment, and Free Exercise clauses of the First Amendment, the Equal Protection clause of the Fourteenth Amendment, and Colorado statutory law. The School District moved for judgment on the pleadings with respect to all claims. The parties completed discovery while the motion was pending, then filed cross motions for summary judgment. The district court granted the motion for judgment on the pleadings, stating that the summary judgment briefs did not contradict the facts upon which the court based its decision.

Ms. Corder appealed the district court's ruling as to each claim. The Court of Appeals for the Tenth Circuit affirmed.

Ms. Corder asks this Court to review the Tenth Circuit's disposition of the free speech issues.

C. Statement of Facts

Ms. Corder was one of fifteen students named as valedictorian for the 2006 graduating class of Lewis-Palmer High School.[1] (Compl. ¶¶ 10, 14.) Prior to the

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[1] The Court of Appeals' decision arose in the context of a motion for judgment on the pleadings. In deciding a motion for judgment on the pleadings, a court must assume that all allegations in the complaint are true. *Bell Atlantic Corp. v. Twombly*, 127 S. Ct. 1955, 1964-65 (2007). Therefore, the Statement of

(Continued on following page)

commencement ceremony, school principal Mark Brewer told the valedictorians that they could decide whether all of the fifteen valedictorians, or a subset thereof, would deliver the valedictory message. (*Id.* ¶ 16.) He did not provide any further instructions concerning the conduct or content of the speech. (*Id.* ¶ 17.) The valedictorians decided on a general topic for the address and that each valedictorian would speak for approximately 30 seconds.[2] (*Id.* ¶¶ 20-21.) They also decided that Ms. Corder would speak last. (*Id.* ¶ 24.)

Before the valedictorians would be allowed to speak, however, they first were required to present their remarks to Mr. Brewer so that he could review them for appropriateness. (*Id.* ¶¶ 27-28.) The speech that Ms. Corder presented to Mr. Brewer for his review did not mention religion. (*Id.* ¶ 29.) At graduation, Ms. Corder concluded the valedictory address as follows:

> Throughout these lessons our teachers, parents and let's not forget our peers have supported and encouraged us along the way. Thank you all for the past four amazing

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Facts set forth above is taken directly from Ms. Corder's complaint. The School District denied many of these allegations, and produced evidence to support those denials in its motion for summary judgment. Nothing contained herein should be construed as a concession with respect to those allegations.

[2] The complaint does not disclose the topic that the valedictorians chose to address.

> years. Because of your love and devotion to our success, we have all learned how to endure change and remain strong individuals. We are all capable of standing firm and expressing our own beliefs, which is why I need to tell you about someone who loves you more than you could ever imagine. He died for you on a cross over 2,000 years ago, yet was resurrected and is living today in heaven. His name is Jesus Christ. If you don't already know Him personally I encourage you to find out more about the sacrifice He made for you so that you now have the opportunity to live in eternity with Him. And we also encourage you, now that we are all ready to encounter the biggest change in our lives thus far, the transition from childhood to adulthood, to leave Lewis-Palmer with confidence and integrity. Congratulations class of 2006.

(*Id.* ¶ 30.)

At the conclusion of the ceremony, Ms. Corder was told that she needed to meet with Mr. Brewer and would not be receiving her diploma. (*Id.* ¶¶ 31-33.) At the subsequent meeting, Mr. Brewer told Ms. Corder that her comments were immature and that she would not receive her diploma until she issued an apology approved by Mr. Brewer. (*Id.* ¶¶ 35-37.)

In response, Ms. Corder drafted the following statement:

> At graduation I know some of you may have been offended by what I said during the

> valedictorian speech. I did not intend to offend anyone. I also want to make it clear that Mr. Brewer did not condone nor was he aware of my plans before giving the speech. I'm sorry I didn't share my plans with Mr. Brewer or the other valedictorians ahead of time. The valedictorians were not aware of what I was going to say. These were my personal beliefs and may not necessarily reflect the beliefs of the other valedictorians or the school staff.

(*Id.* ¶ 43.)

Mr. Brewer reviewed and approved the statement, but required Ms. Corder to add: "I realize that, had I asked ahead of time, I would not have been allowed to say what I did." (*Id.* ¶ 44.) Ms. Corder did include the required statement. (*Id.*) The statement was then distributed via email to the Lewis-Palmer school community. (*Id.* ¶ 46.) Ms. Corder received her diploma. (*Id.* ¶ 47.)

REASONS FOR DENYING THE PETITION

I. Applicable Standards

A. Criteria for Granting a Writ.

In deciding whether to grant a petition for a writ of certiorari, this Court's discretion is guided by three factors: Whether the decision (1) conflicts with decisions of other circuits; (2) conflicts with a decision of a state court of last resort; or (3) departs so far from the

accepted course of judicial proceedings as to warrant an exercise of the Court's supervisory power. Sup. Ct. R. 10(a).

B. Standard of Review.

This case arises in the context of a motion for judgment on the pleadings. An appellate court reviews a lower court's decision to grant a motion for judgment on the pleadings under the *de novo* standard of review, determining for *itself* whether the factual allegations, which are assumed to be true, state a claim for relief. *Nelson v. State Farm Mut. Auto. Ins. Co.*, 419 F.3d 1117, 1120 (10th Cir. 2005). In deciding such a motion a court need not accept as true allegations that the plaintiff has not alleged. *Contractors of Cal., Inc. v. Carpenters*, 459 U.S. 519, 526 (1983). Rather, the factual allegations of the complaint must "raise a right to relief above the speculative level." *Bell Atlantic Corp.*, 127 S. Ct. at 1965.

II. The Petition Does Not Satisfy the Criteria for Review

While Ms. Corder postures this case as a free speech case, the allegations of the complaint make clear that she said exactly what she wished to say at graduation. Ms. Corder's "injury," if any, is that she was called to account for evading the mandatory review process. Ms. Corder, of course, does not have a constitutional right to evade a constitutionally permissible rule. Therefore, the first question is whether

the First Amendment prohibits school officials from exercising editorial control over the remarks of student graduation speakers. Assuming that the First Amendment does not prohibit school officials from exercising editorial control over the remarks of student graduation speakers, the second question becomes what limitations, if any, does the First Amendment place on the authority of school officials to discipline a student who has deliberately evaded the review process.

The Tenth Circuit's answers to these questions are consistent with this Court's precedents and do not conflict with any federal circuit.

A. The Tenth Circuit Correctly Applied *Hazelwood*.

The Tenth Circuit held that the First Amendment did not prohibit school officials from exercising editorial control over the remarks of student graduation speakers, relying on this Court's decision in *Hazelwood School District v. Kuhlmeier*, 484 U.S. 260 (1988).

Hazelwood arose out of a conflict between student reporters and the school principal regarding articles to be published in the school newspaper. This Court framed the issue as follows:

> The question of whether the First Amendment requires a school to tolerate particular student speech – the question that we addressed in *Tinker* – is different from

> the question whether the First Amendment requires a school to affirmatively promote particular student speech. The former question addresses educators' ability to silence a student's personal expression that happens to occur on the school premises. The latter question concerns educators' authority over school sponsored publications, theatrical productions, and other expressive activities that students, parents and members of the community might reasonably perceive to bear the imprimatur of the school.

Id. at 270-71.

Ms. Corder argues that *Hazelwood* cannot be applied to graduation ceremonies because commencement exercises are "not part of the school's instructional program and could not be characterized as part of the curriculum." (Pet. 12.) As Ms. Corder puts it: "There were no more lessons to be learned, no educational purposes to be satisfied, and no academic requirements left unfulfilled. . . . The only remaining interaction between the valedictorians and the District was for the District to present the graduates with diplomas memorializing what they had already accomplished." (Pet. 21.)

While Ms. Corder is correct that graduation terminates a student's obligation to learn, a student's decision to stop learning does not require educators to stop teaching. Thus, graduation exercises are routinely staged, choreographed, and viewed as the final lesson of high school (rather than the first party after

high school). Here, the complaint made no allegations regarding who choreographed and supervised the ceremony, the character of the ceremony, and who paid for the site and supplies, or other indicia that might lead a court to reasonably infer that the commencement exercises of Lewis-Palmer High School departed from the traditional pomp, circumstance, and final words of wisdom that characterize traditional high school graduation ceremonies. While Ms. Corder might have hoped that the lower courts would make such an inference, those courts were not required to accept as true facts that Ms. Corder did not allege. *Contractors of Cal.*, 459 U.S. at 526. Instead, Ms. Corder was required to plead sufficient facts to demonstrate something more than a suspicion of liability on the part of school officials. *Ashcroft v. Iqbal*, 129 S. Ct. 1937, 1949 (2009). Here, Ms. Corder does not argue that the Tenth Circuit failed to apply the correct standard in deciding a motion for judgment on the pleadings.

Moreover, the *Hazelwood* analysis is not limited to formal classroom curricular exercises or the day-to-day instructional program. Instead, it extends to "school sponsored publications, theatrical productions, and *other expressive activities that students, parents and members of the community might reasonably perceive to bear the imprimatur of the school*." *Hazelwood*, 484 U.S. at 270-71 (emphasis added).

Here, the Court need not imagine, based on the skeletal facts that Ms. Corder alleged, whether a hypothetical reasonable observer would perceive that

the valedictory speech bore the imprimatur of the school. The allegations of her complaint make clear that the valedictory address *did bear* the school's imprimatur. An imprimatur is "a license to print or publish." WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 1137 (1986). Here, the complaint affirmatively alleges that graduation speakers were *required* to get the principal's approval before they were allowed to speak. (Compl. ¶¶ 27-28.) Thus, the Tenth Circuit's decision to apply *Hazelwood* is consistent with *Hazelwood*.

B. There is No Conflict Between Circuits.

Ms. Corder's argument that there is a conflict between circuits on this issue is off the mark. In fact, courts *uniformly* have upheld the authority of school officials to exercise editorial control over the remarks of student graduation speakers. *E.g., Lassonde v. Pleasanton Unified Sch. Dist.*, 320 F.3d 979, 981-82 (9th Cir. 2003) (school officials may require prior review of graduation address); *Cole v. Oroville Union High Sch. Dist.*, 228 F.3d 1092, 1096 (9th Cir. 2000) (same); *Ashby v. Isle of Wright County Sch. Bd.*, 354 F. Supp. 2d 616, 629 (E.D. Va. 2004).

In an effort to demonstrate a "conflict" between circuits, Ms. Corder cites a case – *Adler v. Duval County School Board*[3] – in which a school district

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[3] 206 F.3d 1070 (11th Cir. 2000).

chose to abdicate editorial control over student commencement addresses. (Pet. 13.) In *Adler*, the school's policy expressly provided that the content of any student message was to be "prepared by [a] student volunteer and [not] monitored or otherwise reviewed" by school officials. *Id.* at 1072. The student's message *might* be a broad nondenominational prayer, a narrowly sectarian prayer, an endorsement of a political candidate, an imitation of a rock star, an indictment of the status quo, or an exhortation to engage in unprotected sex with multiple partners. Since the policy prevented school officials from controlling the content of the message, the student's speech would be wholly private, creating a circuit-breaker that separates the student's speech – religious or otherwise – from government endorsement. *See generally Zelman v. Simmons-Harris*, 536 U.S. 639, 652-53 (2002) (Establishment Clause not implicated when private citizen chooses to support religion). *Adler*, however, held only that such a policy is not facially unconstitutional. *Adler*, 206 F.3d at 1091. Thus, the case stands only for the proposition that the constitution *permits* school officials to abdicate control over graduation speeches. It does not stand for the proposition that the Constitution *requires* school officials to relinquish control over student graduation speeches. In the end, the "conflict" asserted by Ms. Corder is nothing more than different policy choices by different school boards, not different interpretations of the Constitution by different federal circuits.

Given the creativity and often limited maturity of high school students,[4] if school officials are required to choose between unsupervised student graduation speakers on one hand or no student graduation speakers on the other hand, school officials might well choose not to include any student speakers. *See generally Arkansas Educ. Television Comm'n v. Forbes*, 523 U.S. 666, 681-82 (1998) (requiring public entity to choose between "a cacophony on one hand, and First Amendment liability on the other" might lead public entity to choose no speech at all). "A First Amendment jurisprudence yielding these results does not promote speech but represses it." *Id.* at 682.

In sum, *Hazelwood* makes clear that the First Amendment does not prohibit school officials from requiring high school graduation speakers to submit their remarks to school officials for prior review. No federal court has held otherwise.

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[4] *See generally Morse v. Frederick*, 551 U.S. 393, 397 (2007) ("BONG HiTS 4 JESUS"); *Bethel Sch. Dist. No. 403 v. Fraser*, 478 U.S. 675, 687 (1986) ("I know a man who is firm – he's firm in his pants. . . ."); *Nuxoll ex rel. Nuxoll v. Indian Prairie School Dist. # 204*, 523 F.3d 668, 671 (7th Cir. 2008) ("Be Happy, Not Gay"); *Brandt v. Bd. of Educ. of City of Chicago*, 480 F.3d 460 (7th Cir. 2007) (t-shirt highlight dispute between "gifties" and "tards"); *Guiles v. Marineau*, 461 F.3d 320, 322 (2nd Cir. 2006) (student t-shirt highlighted alleged drug use of President); *Nixon v. N. Local Sch. Dist. Bd. of Educ.*, 383 F. Supp. 2d 965, 967 (S.D. Ohio 2005) ("Islam is a lie!").

C. The Compelled Speech Claim Does Not Present a Certworthy Issue.

Given that the school's prior review policy was constitutional, the next question is what limitation, if any, does the First Amendment place on a school district's authority to discipline a student who violates such a policy. Ms. Corder argues that the Constitution prohibits school officials from requiring students to apologize for misconduct because the apology constitutes "compelled speech."

This Court has long made clear that courts should not "intervene in the resolution of conflicts which arise in the daily operation of school systems and which do not directly and sharply implicate basic constitutional values." *Epperson v. Arkansas*, 393 U.S. 97, 104 (1968). If Ms. Corder had been compelled to renounce her religious faith, she might have a claim that her constitutional rights were, in the words of *Epperson*, "directly and sharply implicated." *See West Virginia Bd. of Educ. v. Barnette*, 319 U.S. 624 (1943) (school officials may not compel student to recite the Pledge of Allegiance when doing so violates the student's religious beliefs). Ms. Corder's allegedly coerced statement, however, falls far short of a compelled oath of conscience: The statement reads as follows:

> At graduation I know some of you may have been offended by what I said during the valedictorian speech. I did not intend to offend anyone. I also want to make clear that Mr. Brewer did not condone nor was he

> aware of my plans before giving the speech. I'm sorry I didn't share my plans with Mr. Brewer or the other valedictorians ahead of time. The valedictorians were not aware of what I was going to say. These were my personal beliefs and may not necessarily reflect the beliefs of the other valedictorians or the school staff. I realize that had I asked ahead of time, I would not have been allowed to say what I did.

(Compl. ¶¶ 43-44.)

Reduced to its essentials, Ms. Corder's argument is that because the apology involved speech, and speech is a constitutional right, it follows that the apology violated the constitution.

As a practical matter, education is a speech-based endeavor, and students are routinely compelled to speak. They are compelled to acknowledge their presence during roll call; compelled to respond to questions; compelled to write assignments; compelled to give classroom presentations; and, compelled to produce answers to examination questions. Attempting to build a First Amendment framework that reaches into all corners of the educational enterprise would distort both education and First Amendment jurisprudence.

As a legal matter, Ms. Corder is correct that speech is a constitutional right. U.S. CONST. AMEND. I. The fact that speech is a constitutional right, however, does not end the inquiry. Life, liberty, and property are constitutional rights as well. U.S. CONST.

AMEND. XIV, § 1. Yet, the government may deprive persons of life, liberty and property so long as those deprivations are preceded by procedures minimizing the risk of an erroneous deprivation. *Mathews v. Eldridge*, 424 U.S. 319, 334-35 (1976). In minor student discipline matters, the constitution requires only that a student have notice of the alleged wrongdoing, and the opportunity to explain her side of the story. *Goss v. Lopez*, 419 U.S. 565, 580-83 (1975). Here, of course, Ms. Corder's conduct was never in question. Thus, there was no chance of an erroneous deprivation.

Once misconduct has been identified, the disciplinary options available to school officials under the Constitution are very broad extending even to corporal punishment. *Ingraham v. Wright*, 430 U.S. 651, 678 (1977) ("In the ordinary case, a disciplinary paddling neither threatens to violate any substantive right nor condemns the child to suffer grievous loss of any kind.") (internal citation and quotation omitted). In fact,

> [s]uch leeway is particularly necessary when school discipline is involved. The Court has noted the 'substantial interest of teachers and administrators in maintaining discipline in the classroom.' Educators must be able to respond effectively to the disciplinary exigencies of the moment. They must also be able to tailor these responses to the peculiar remedial needs that exist in particular schools. The Supreme Court has long recognized that educators are best situated to

> identify those needs and optimize their implementation.

Wofford v. Evans, 390 F.3d 318, 323 (4th Cir. 2004) (internal citations omitted).

As the Tenth Circuit recognized in another recent case, "If corporal punishment is a constitutionally acceptable form of discipline for a student's defiance, it is implausible that timeouts are not." *Couture v. Bd. of Educ.*, 535 F.3d 1243, 1253-54 (10th Cir. 2008). The same can easily be said of compelled apologies which have long been a standard practice in public education and have never been seriously questioned by courts. *See generally Wildman v. Marshalltown Sch. Dist.*, 249 F.3d 768 (8th Cir. 2001); *Riggan v. Midland Indep. Sch. Dist.*, 86 F. Supp. 2d 647, 659-60 (W.D. Tex. 2000); *Kicklighter v. Evans County Sch. Dist.*, 968 F. Supp. 712, 719 (S.D. Ga. 1997).

As the Tenth Circuit noted, this Court has held that the difference between compelled speech and compelled silence is "without constitutional significance." *Riley v. Nat'l Fed'n of the Blind of N.C., Inc.*, 487 U.S. 781, 796-97 (1988). Similarly, this Court has held that the constitutional rights of student are not automatically coextensive with the rights of adults in other settings. *Morse*, 551 U.S. at 396-97. Thus, the Tenth Circuit reviewed the constitutionality of the school's discipline of Ms. Corder under *Hazelwood*, the framework established by this Court for managing speech questions that arise in the school setting. As a result, the Tenth Circuit's decision to

apply *Hazelwood* does not represent such a dramatic departure from the accepted course of judicial proceedings as to warrant an exercise of the Court's supervisory power. Moreover, the Tenth Circuit's decision to apply *Hazelwood* is consistent with the only other federal appellate court to address the issue. *C.N. v. Ridgewood Bd. of Educ.*, 430 F.3d 159, 178 (3rd Cir. 2005) ("School sponsored speech may be restricted for legitimate educational purposes, and it seems clear that a school may compel some speech for such purposes."). Thus, there is no split in the federal circuits.

Hazelwood holds that educators may regulate school sponsored speech as long as those regulations are reasonably related to legitimate pedagogical concerns. 484 U.S. at 273. Thus, in the context of student apologies, the dispositive question is whether the apology is reasonably related to legitimate pedagogical concerns.

More specifically here, the question is whether Mr. Brewer had a legitimate educational reason to demand (1) that Ms. Corder clarify that her religious exhortations were not previously approved by school officials; (2) that Ms. Corder apologize to the principal and fellow valedictorians for deceiving them as to what she intended to say at graduation; and (3) that Ms. Corder acknowledge that had she asked ahead of time she would not have been allowed to say what she said.

Hazelwood makes clear that legitimate pedagogical concerns go beyond correcting speech that violates the rules of grammar:

> A school must also retain the authority to refuse to sponsor student speech that might reasonably be perceived to advocate drug or alcohol use, irresponsible sex, or conduct otherwise inconsistent with the shared values of a civilized social order or to associate the school with any position other than neutrality on matters of political controversy.[5]

Id. at 272.

As to the first question – whether Mr. Brewer had a legitimate educational reason for compelling Ms. Corder to clarify that her religious exhortations were not previously approved by school officials –

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[5] Thus, *Hazelwood*'s legitimate pedagogical concerns standard occupies a middle ground between private speech that is broadly protected by the First Amendment and government speech to which the First Amendment does not apply. *See Garcetti v. Ceballos*, 547 U.S. 410 (2006); *Rosenberger v. Rector & Visitors of the University of Virginia*, 515 U.S. 819, 833-34 (1995) ("When the government appropriates public funds to promote a particular policy of its own it is entitled to say what it wishes."); *Rust v. Sullivan*, 500 U.S. 173 (1991) (First Amendment not offended when government supports discussion of family planning services but prohibits discussion of abortion as a family planning option). Under *Hazelwood* school sponsored speech is not completely beyond the reach of the First Amendment. Instead, educators' decisions must be reasonably related to legitimate pedagogical concerns. 484 U.S. at 273.

Hazelwood allows school officials to regulate speech in such a way as to insure that the school is not aligned with a position other than neutrality on matters of public controversy. *Id.* When it comes to matters of religion, public officials are *required* to remain neutral. *McCreary County v. Am. Civil Liberties Union*, 545 U.S. 844 (2005). Here, Ms. Corder evaded the review process and effectively forged Mr. Brewer's imprimatur on a valedictory speech that urged the audience to learn more about Christ so that they could live with Him in eternity. Certainly, Mr. Brewer had a legitimate educational interest in insuring the school community knew that Ms. Corder's call to adopt the Christian faith was her own religious advice, and not the religious advice of school officials.

As to the second question – whether Mr. Brewer had a legitimate educational interest in requiring Ms. Corder to apologize for presenting Mr. Brewer and her fellow valedictorians with one set of remarks and then concluding the speech with a different set of remarks at graduation – the Constitution does not protect duplicity.[6] *See generally Cohen v. Cowles Media Inc.*, 501 U.S. 663 (1991) (reporter does not have constitutional right to break promise of confidentiality). As noted above, it is common practice for schools to require students to apologize when they misbehave. *Wildman*, 249 F.3d 768; *Riggan*, 86

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[6] WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY 703 (1986) (duplicity is "deception by pretending to entertain one set of feelings and acting under the influence of another").

F. Supp. 2d 647; *Kicklighter*, 968 F. Supp. 712. Given that the facts alleged by Ms. Corder demonstrate that she told Mr. Brewer and her fellow valedictorians that she was going to do one thing, and then proceeded to do something completely different, there is no question that Ms. Corder engaged in misconduct. School officials clearly have a legitimate interest in requiring students to apologize for misconduct.

As to the third question – whether Mr. Brewer had a legitimate educational reason for requiring Ms. Corder to acknowledge that had she asked ahead of time she would not have been allowed to say what she said – there is an unbroken line of cases demonstrating that had Ms. Corder asked to close the valedictory address by encouraging the audience to accept Christ's salvation, school officials would have been fully empowered to tell her that she could not do so. *Lassonde*, 320 F.3d at 981-82; *Cole*, 228 F.3d at 1096; *Ashby*, 354 F. Supp. 2d at 629. These cases are entirely consistent with *Hazelwood*'s holding that: "A school must also retain the authority to refuse to sponsor student speech that might reasonably be perceived to . . . *associate the school with any position other than neutrality on matters of political controversy*." 484 U.S. at 272 (emphasis added). Schools clearly have a legitimate educational interest in not getting drawn into debates regarding the proper source for religious salvation. Thus, Ms. Corder was required to recite a correct principle of law, no different than a student who is compelled to acknowledge: "I realize that had I asked ahead of time I

would not have been allowed to smoke in the lavatory." While Ms. Corder may disagree with the legal principle, generations of students have been required to acknowledge the boundaries of school authority whether they liked those boundaries or not. Generations of law students have had their graduation, not mere receipt of a diploma that *symbolizes* graduation, conditioned upon accurately reciting principles of constitutional law with which they disagree.[7]

In the end Ms. Corder made a miscalculation that is common to many graduating seniors: "Since I'm a high school graduate," they reason, "the principal can't discipline me." The miscalculation is that while the students may have graduated, they have not yet been presented with, as Ms. Corder puts it, the "diploma[] memorializing what they had already accomplished." (Pet. 21.) By withholding the memorialization of graduation until after commencement exercises, school officials are able to insure good behavior during the commencement exercises. Ms. Corder asks this Court to put this disciplinary leverage beyond the reach of school officials as a matter of constitutional law. The Tenth Circuit declined to do so, a decision that is consistent with the precedents of this Court and unanimously supported by the decisions of other courts.

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[7] Ms. Corder does not allege that Mr. Brewer threatened to withhold her transcripts.

CONCLUSION

WHEREFORE, the Respondent respectfully asks that this Court deny the petition for a writ of certiorari.

Respectfully submitted,

W. STUART STULLER
Counsel of Record
CAPLAN AND EARNEST LLC
1800 Broadway
Suite 200
Boulder, CO 80302
(303) 443-8010

Counsel for Respondent

APPENDIX

Section 22-1-120 of the Colorado Revised Statutes provides:

(1) The general assembly declares that students of the public schools shall have the right to exercise freedom of speech and of the press, and no expression contained in a student publication, whether or not such publication is school-sponsored, shall be subject to prior restraint except for the types of expression described in subsection (3) of this section. This section shall not prevent the advisor from encouraging expression which is consistent with high standards of English and journalism.

(2) If a publication written substantially by students is made generally available throughout a public school, it shall be a public forum for students of such school.

(3) Nothing in this section shall be interpreted to authorize the publication or distribution in any media by students of the following:

(a) Expression that is obscene;

(b) Expression that is libelous, slanderous, or defamatory under state law;

(c) Expression that is false as to any person who is not a public figure or involved in a matter of public concern; or

(d) Expression that creates a clear and present danger of the commission of unlawful acts, the violation of lawful school regulations, or the material and substantial disruption of the orderly operation of the school or that violates the rights of others to privacy or that threatens violence to property or persons.

(4) The board of education of each school district shall adopt a written publications code, which shall be consistent with the terms of this section, and shall include reasonable provisions for the time, place, and manner of conducting free expression within the school district's jurisdiction. The publications code shall be distributed, posted, or otherwise made available to all students and teachers at the beginning of each school year.

(5)(a) Student editors of school-sponsored student publications shall be responsible for determining the news, opinion, and advertising content of their publications subject to the limitations of this section. It shall be the responsibility of the publications advisor of school-sponsored student publications within each school to supervise the production of such publications and to teach and encourage free and responsible expression and professional standards for English and journalism.

(b) For the purposes of this section, "publications advisor" means a person whose duties include the supervision of school-sponsored student publications.

(6) If participation in a school-sponsored publication is part of a school class or activity for which grades or school credits are given, the provisions of this section shall not be interpreted to interfere with the authority of the publications advisor for such school-sponsored publication to establish or limit writing assignments for the students working with the publication and to otherwise direct and control the learning experience that the publication is intended to provide.

(7) No expression made by students in the exercise of freedom of speech or freedom of the press shall be deemed to be an expression of school policy, and no school district or employee, or parent, or legal guardian, or official of such school district shall be held liable in any civil or criminal action for any expression made or published by students.

(8) Nothing in this section shall be construed to limit the promulgation or enforcement of lawful school regulations designed to control gangs. For the purposes of this section, the definition of "gang" shall be the definition found in section 19-1-103 (52), C.R.S.